



OCT 21 1944

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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1944.

JESSE MITCHELL, CLARENCE EVANS  
and JOHN T. WADDILL, as Members  
of the State Tax Commission of  
Missouri, et al.,

Petitioners,

vs.

STATE OF MISSOURI, at the Relation  
of the Cairo Bridge Commission, a  
Body Corporate and Politic,  
Respondent.

**BRIEF OF RESPONDENT IN OPPOSITION.**

GEORGE A. McNULTY,  
Of St. Louis, Missouri,

W. E. CUMMINS,  
Of Cairo, Illinois,

EMMET T. CARTER,  
DAVID A. McMULLAN,  
Of St. Louis, Missouri,

Counsel for Respondent.



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**BRIEF OF RESPONDENT IN OPPOSITION.**

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**OPINION BELOW.**

The opinion of the Supreme Court of the State of Missouri (R. 178-188) is reported in 181 S. W. (2d) 496. It is not yet officially reported.

**JURISDICTION.**

The order of the Supreme Court of Missouri which petitioners seek to have reviewed was entered on July 3, 1944 (R. 195).

Petitioners invoked the jurisdiction of this Court under Section 237 (b) of the Judicial Code. See also Rule 38, Par. 5 of the rules of this Court.

### **STATUTES INVOLVED.**

“An Act creating the Cairo Bridge Commission and authorizing said Commission and its successors to construct, maintain, and operate a bridge across the Ohio River at or near Cairo, Ill.,” approved April 13, 1934, 48 Stat. 577.

“An Act to authorize the Cairo Bridge Commission, or the successors of said Commission, to acquire by purchase, and to improve, maintain, and operate a toll bridge across the Mississippi River at or near Cairo, Ill.,” approved June 14, 1938, 52 Stat. 679.

### **QUESTION PRESENTED.**

The Act of June 14, 1938 provides that all of the provisions of Sections 4 and 5 of the Act of April 13, 1934, “relating to the bridge to be constructed, to the bonds to be issued and to the trust agreement to be entered into under the authority of said Act, and relating to the collection of bridge tolls and to the application of such tolls” should apply to the bridge to be acquired and to the bonds to be issued under the authority of the 1938 Act. The issue is whether the 1938 Act incorporated by reference as applicable to the bridge to be acquired under its authority, the provision in Section 4 of the 1934 Act which, with reference to the bridge to be constructed under the authority therein conferred, provided that “said bridge \* \* \* shall be exempt from all federal, state, municipal and local taxation.”

### **STATEMENT.**

Respondent desires to direct attention to the fact that the Act of Congress of April 13, 1934, 48 Stat. 577, referred to on page 3 of petitioners' application, created the Cairo Bridge Commission. Respondent desires to correct what it believes is an inaccurate statement on page 4 of peti-

tioners' application, with reference to the position taken by the petitioners before the Supreme Court of the State of Missouri. The position of petitioners was accurately stated by the Supreme Court of the State of Missouri, as follows:

"It is not contended that Congress lacked the power to provide the Mississippi River bridge (fol. 231) here involved should be tax exempt. Respondents simply assert that on a proper construction the reference in Sec. 5 of the 1938 Act back to Secs. 4 and 5 of the 1934 Act, did not make the bridge tax exempt; although they concede those two sections of the 1934 Act did exempt the Ohio River bridge from taxation" (R. 181).

"It is admitted here that the 1934 Act of Congress created the relator Bridge Commission as a Federal instrumentality; and that it did expressly exempt the Ohio River bridge from all taxation" (R. 184).

Attached as an appendix are the points and authorities of petitioners' (Respondents in State Court) statement, brief and argument filed in the Supreme Court of the State of Missouri. The rules and decisions of the Supreme Court of the State of Missouri require all points that are to be considered by the Court to be listed under Points and Authorities.<sup>1</sup>

<sup>1</sup> Rules of the Supreme Court of Missouri, 15: "The brief for appellant shall distinctly allege the errors committed by the trial court and shall contain in addition thereto: \* \* \* (3) a statement, in numerical order, of the points relied on, with citation of authorities thereunder, and no reference will be permitted at the argument to errors not specified; \* \* \* The respondent in his brief may adopt the statement of the appellant; or, if not satisfied therewith, he shall in a concise statement correct any errors therein. In other respects the brief of respondent shall follow the order of that required of appellant. No brief or statement which violates this rule will be considered by the Court."

"Rule 33. Procedure as to Original Writs. \* \* \* On final hearing printed abstracts and briefs shall be filed in all respects as is required in appeals and writs of error in ordinary cases."

Copeland v. Smith, 197 S. W. 348 (Mo. Sup.) (not in official reports);

Schroeder v. Edwards, 184 S. W. 108, 267 Mo. 459;

Eisenbarth v. Powell Bros. Truck Lines, 161 S. W. (2d) 263 (Mo. Sup.) (not yet officially reported).



## SUMMARY OF ARGUMENT.

The Supreme Court of the United States should not issue its writ of certiorari because:

### I.

The Supreme Court of the State of Missouri has decided no Federal question of substance or of general application.

(a) The decision involves a special Act of Congress, purely local in scope and consideration;

(b) The decision does not interpret an act of general application and does not involve in an adverse manner any Federal agency;

(c) The decision involves no substantial Federal question.

### II.

The decision of the Missouri Supreme Court is not in conflict with applicable decisions of this Court or any federal court, or any state court on a substantial federal question or matter of governmental policy.

### III.

A review of the Missouri Supreme Court decisions would only result in an affirmance because contention of petitioners is without substantial foundation or merit.

## ARGUMENT.

### I.

#### **The Supreme Court of the State of Missouri Has Decided No Federal Question of Substance or of General Application.**

(a) The Cairo Bridge Commission was created by an Act of Congress approved April 13, 1934 (R. 47-54). This Act authorized the Commission to construct and operate a bridge across the Ohio River. Subsequently, the Congress of the United States passed an Act, approved June 14, 1938 (52 Stat. 679) (R. 54-57), which authorized the Cairo Bridge Commission to acquire by purchase and to maintain and operate a toll bridge across the Mississippi River, at or near Cairo, Illinois.

Subsequently the State of Missouri attempted to assess for taxation that part of the Mississippi River Bridge located in Missouri and the Cairo Bridge Commission instituted proceedings in the Missouri Supreme Court to declare said assessment void. The question involved is the interpretation of the Act of Congress creating the Cairo Bridge Commission and the Act of Congress, authorizing the Cairo Bridge Commission to acquire the Mississippi River Bridge. Such legislation affects the rights of the parties involved as to a particular piece of property as a result of special legislation with reference to a particular situation.

(b) The legislation being special, the decision did not interpret an Act of general application, and the decision being in favor of tax exemption, it does not adversely affect any federal agency. As stated by the Missouri Supreme Court (R. 179), the only question was that of statutory construction, which involves certain references made by the Act authorizing acquisition of the

bridge to a prior Act creating the Cairo Bridge Commission. This merely required the Supreme Court of the State of Missouri to apply the generally recognized doctrine that in the drafting of legislation the legislative body has the right to include other acts or portions thereof by reference. Reference statutes are frequently used to avoid unnecessary repetition, and their validity has been generally recognized in many jurisdictions.<sup>2</sup>

(c) Petitioners state (Point IV of Statement of Reasons Relied on for Allowance of Writ, p. 7) that "An important question on the relation of the federal and state governments with regard to taxation is raised, inasmuch as the State of Missouri has always taxed the Mississippi River Bridge prior to the time this bridge was taken over by the Cairo Bridge Commission and the claim to tax exemption was advanced." The statement is not developed in the argument but it is a sufficient answer to point out that the bridge was previously owned by a private corporation and the proposition asserted by petitioners has no more validity than would the contention that taxes should be levied on the new Federal Court House on Twelfth and Market Streets, St. Louis, Missouri, because the land was previously taxed before the United States Government acquired the property.

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<sup>2</sup> *Binghamton Bridge*, 3 Wall. 51, 18 L. Ed. 137;  
*Engel v. Davenport*, 271 U. S. 33, 70 L. Ed. 813;  
*State v. Lloyd*, 320 Mo. 236, 7 S. W. (2d) 344;  
*Brown v. State*, 323 Mo. 138, 19 S. W. (2d) 12, 1. c. 17;  
*State ex rel. School District of Kansas City v. Lee*, 334 Mo. 513, 66 S. W. (2d) 521;  
*State v. Peyton*, 234 Mo. 517, 137 S. W. 979;  
*U. S. ex rel. London v. Phelps*, 22 Fed. (2d) 288;  
*Three Heirs of Ludlow v. Johnson*, 3 Ohio Rep. (Hammond) 553, 1. c. 572;  
*The Brazil*, 134 Fed. 29;  
*Quinlan v. Houston and T. C. Ry. Co.*, 34 S. W. 738 (Texas);  
*People ex rel. Everson v. Lorillard*, 31 N. E. 1011, 135 N. Y. 285;  
25 R. C. L. 907.

## II.

**The Decision of the Missouri Supreme Court Is Not in  
Conflict With Applicable Decisions of This Court or  
Any Federal Court, or Any State Court on a  
Substantial Federal Question or Matter  
of Governmental Policy.**

The decision of the Supreme Court of the State of Missouri in the case at bar is not in conflict with the case of **Miller et al. v. City of Greenville, Mississippi, et al.**, 138 Fed. (2d) 712. The City of Greenville case did not decide the matter upon the merits of the plaintiff's claim to tax exemption. The Court in its opinion states (l. c. 721): "Reversed with directions to dismiss, without decision or any indication of opinion upon the merits of the plaintiff's claim to tax-exemption." The case was reversed on jurisdictional grounds. Moreover, the type of statute in the City of Greenville case was entirely different from that involved in this case. The City of Greenville was empowered to construct, maintain and operate a bridge across the Mississippi River. The Court in the Greenville case specifically pointed out that the bridge was owned and operated by the City. In the case at bar the Commission is a creature of Congress. In the City of Greenville case there was no clause in the Act which granted tax-exemption, nor was there any reference to any other similar statute. The distinction between the case at bar and the City of Greenville case was pointed out in the decision of the Missouri Supreme Court from which we quote:

"Respondents say that conclusion is directly contrary to the ruling in **Miller v. City of Greenville, Miss.** (8th Ct.), 138 Fed. (2d) 712, 717; but we think not. That case, a declaratory judgment suit, was not ruled on the merits. It held no issues were presented

upon which Federal jurisdiction could be appropriately exercised; and reversed and remanded the cause with directions to the Federal District Court to dismiss the suit without expressing any opinion on the merits. Nevertheless the Circuit Court of Appeals did express some conclusions adverse to a claimed tax exemption, in stating why Federal jurisdiction should not be exercised. So we consider it. That suit was a bridge tax exemption case; the bridge was built across the Mississippi River under an Act of Congress (52 Stat. 681) dated June 14, 1938, the same date as that of the 1938 Act here involved; and the Act did provide that the bridge tolls should be so adjusted as to cover the construction, maintenance, repair and operating costs of the bridge, and that after it had been paid for it should be maintained and operated toll free. But otherwise the facts were entirely different. \* \* \*

“The Act providing therefor was a short, one page statute, which merely authorized the City of Greenville to construct it and conferred the power of eminent domain for the particular project as possessed by railroad and bridge corporations. It did not say the bridge should be a Federal instrumentality. \* \* \* And Congress made no reference whatever in the Greenville Act to exempting the bridge from taxation” (R. 186).

Petitioners recite (Petition for Writ, p. 17) that part of the Greenville decision which quotes from the presidential veto. The point here attempted to be made was, we believe, disposed of by the decision of the Supreme Court of the State of Missouri. The Court said:

“Respondents pick up that reasoning and point out that the instant 1938 Act authorizing the purchase of the Mississippi River bridge at Cairo, also was approved on June 14, only eleven days before the President vetoed the first Dubuque Act. Thence they argue he must have had the same adverse views in

mind when he approved the 1938 Cairo Act; and from that they conclude he thought the reference in Sec. 5 of said 1938 Cairo Act to Sec. 4 of the 1934 Cairo-Ohio River Bridge Act did not adopt the tax exemption clause therein; for otherwise he would have vetoed the 1938 Cairo Act also. We cannot say. The President may have felt that since one of these two Government owned and closely adjacent bridges stemming out of Cairo was tax exempt, the other ought to be likewise; or the point may have been overlooked by his advisers" (R. 187).

The decision of the Missouri Supreme Court is not in conflict with the case of **Appeal of the City of Dubuque Bridge Comm.**, 5 N. W. (2d) (Iowa) 334, because there the Act contained no tax-exempt feature and did not designate the bridge as a federal instrumentality. In the Dubuque case, the Court said, l. c. 338: "With this history in mind, it is evident that Congress in the passage of the present Act had no intention of declaring that the bridge should be exempt from taxation, either directly or by designating it a governmental instrumentality."

### III.

#### **A Review of the Missouri Supreme Court Decisions Would Only Result in an Affirmance Because Contention of Petitioners Is Without Substantial Foundation or Merit.**

It was admitted before the Missouri Supreme Court that the Congress of the United States had the power to establish and provide for the operation of bridges as a proper function of the federal government under the Constitution, and had the right to protect agencies so established from the burden of local taxation. The only question remaining, then, was whether or not Congress did exempt from taxation the Mississippi River Bridge, the property of

the Cairo Bridge Commission. Regardless of whether or not the Cairo Bridge Commission is such an arm of the federal government that it is not subject to taxation, since it is quite clear that Congress did exempt the Cairo Bridge, we submit that the decision of the Supreme Court of the State of Missouri arrived at the correct result. The Supreme Court of the State of Missouri stated (Transcript, p. 179): "This raises a question of statutory construction which involved certain references made by that Act to a prior Act of Congress creating the relator, Cairo Bridge Commission. It is the only question we shall discuss, since we think it is decisive of the case." The Supreme Court of Missouri further stated (Transcript, p. 181): "It is not contended that Congress lacked the power to provide the Mississippi River Bridge here involved should be tax-exempt."

It is now urged for the first time (see Appendix) that this being a claim to exemption from taxation the rule is that it must be strictly construed. The Supreme Court of the State of Missouri stated (Trans. p. 184):

"The general doctrine is that tax exemption statutes should be strictly construed because taxes are imposed on the whole citizenry for the support of the government, and exemptions are discriminatory. 61 C. J., Sec. 396, p. 392. 'Taxation is the rule, exemption is the exception.' *Y. W. C. A. v. Baumann*, 344 Mo. 898, 902 (1), 130 S. W. (2d) 499, 501 (1). But as to property owned by the State or any of its political subdivisions, the doctrine is reversed. There taxation is the exception and not the rule."

This is well supported by the authorities.<sup>3</sup>

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<sup>3</sup> *Austin v. Alderman*, 7 Wall. (U. S.) 694, 19 L. Ed. 224, 1 c. 226;  
*Russell v. Sebastian*, 233 U. S. 195, 58 L. Ed. 912;  
*Mark Graves v. State of New York ex rel. James B. O'Keefe*, 83 L. Ed. 927, 306 U. S. 466;  
*State v. Johnston*, 214 Mo. 636, 113 S. W. 1083;  
*Mullins v. Mt. St. Mary's Cemetery Assn.*, 239 Mo. 681, 144 S. W. 109.

Section 4 of the 1934 Act (Trans. pp. 48-49), with reference to the bridge to be constructed, states that "Said bridge \* \* \* shall be exempt from all federal, state, municipal and local taxation."

Section 5 of the 1938 Act states (Trans. p. 56): "**All** of the provisions of Sections 4 and 5 of said Act of April 13, 1934, **relating to the bridge to be constructed**, to the bonds to be issued and to the trust agreement to be entered into under the authority of said Act, and relating to the collection of bridge tolls and to the application of such tolls, **shall apply to the bridge to be acquired** and to the bonds to be issued under the authority of this Act." (Emphasis supplied.) The tax-exemption feature in the 1934 Act related to the bridge to be constructed, therefore it applies to the bridge to be acquired under the 1938 Act.

We submit that there could have been no better method chosen to identify the provisions contained in Sections 4 and 5 of the 1934 Act, which were desired to be included in the 1938 Act than that selected. It is short, concise, complete and descriptive.

Petitioners cite the case of **Annapolis & Elkridge R. R. Co. v. County Commissioners of Anne Arundel County**, 26 L. Ed. 359, 103 U. S. 1. That case contained words of limitation in the granting of tax-exemption. Such is not so in the case at bar. The Act involved in the Annapolis & Elkridge R. R. Co. case granted such powers as were necessary to the construction and repair of the railroad, and the Court stated: "Consequently, on such of the privileges of the old company as were necessary could be enjoyed by the new as were appropriate to the work the new company was authorized to do." The case held that exemption from taxation was not necessary to the construction and repair of the railroad.

The case of **Alexandria Canal R. R. and Bridge Co. v. District of Columbia**, 12 D. C. 217, is easily distinguishable



from the case at bar, as there again tax exemption was not specifically granted and all rights, privileges and powers were limited.

### CONCLUSION.

It is respectfully submitted that a writ of certiorari to review the decision of the Supreme Court of Missouri should be denied.

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## APPENDIX.

### POINTS AND AUTHORITIES IN BRIEF OF PETITIONERS (RESPONDENTS BELOW) IN STATE COURT.

#### I.

The Cairo Bridge Commission is not such an arm of the Federal government that it is not subject to taxation.

United States v. Query, 21 F. Supp. 784, 786;  
Helvering v. Gerhardt, 304 U. S. 405, 409, 58 S. Ct.  
969, 1. c. 974, 82 L. Ed. 1427;  
Miller et al. v. City of Greenville et al., 138 F. (2d)  
712, 1. c. 717.

#### II.

The construction of a Federal Act by a Federal court is conclusive on the state court.

Miller et al. v. City of Greenville et al., 138 F. (2d)  
712;  
14 Am. Jur., p. 339, Sec. 121;  
Foster Lumber Co. v. Atchison, Topeka & Santa Fe  
Railway Co. et al., 270 Mo. 629, 1. c. 636;  
State ex rel. Railroad Co. v. Nortoni, 55 S. W. (2d)  
272, 331 Mo. 764, 1. c. 769.

#### III.

Congress has not exempted from taxation the Mississippi River Bridge, the property of the Cairo Bridge Commission.

State v. Lloyd, 320 Mo. 336, 7 S. W. (2d) 344.

IV.

The construction placed on this Act by the Congress and the President is persuasive.

Miller et al. v. City of Greenville, 138 F. (2d), l. e. 717;

Automobile Gasoline Co. v. City of St. Louis, 32 S. W. (2d) 281;

State ex rel. Hanlon v. City of Maplewood, 99 S. W. (2d) 138;

State ex rel. Union Electric Light & Power Co. v. Baker, 293 S. W. 399.

V.

The taxing of the bridge would not be contrary to the provisions of the Act.

Miller et al. v. City of Greenville et al., 138 F. (2d) 712.

